

## **An Innovative Approach to *Pro Bono* Systemic Reform**

**By Jan Allen May**

In my experience, *pro bono* programs in legal services and public interest organizations tend to either concentrate on individual cases or, in the case of organizations like the ACLU, on impact litigation. AARP Legal Counsel for the Elderly (LCE) has embarked this year on an exciting experiment in new ways to approach systemic reform by tapping our Board, our staff attorney and *pro bono* attorney components who primarily have been involved in individual casework. Too rarely do staff attorneys handling individual cases take (or are afforded the opportunity to take) time out, step back, and consider what types of systemic activity might provide some overall remedies to the client problems that they see daily. While staff attorneys at LCE do devote about 25% of their time to impact work, they have rarely met as a group to brainstorm about additional systemic issues which, if resources permitted, we might address on behalf of our clients and the client community. Possible systemic fixes might involve large litigation, new legislation, focused community education, or other community work. Advocates on the front lines are in the best position to see what is really happening and can be a prime source for such ideas.

### **Brainstorming Meetings**

Thus, we at LCE have in the last year or so held a series of meetings with staff attorneys, the long term care ombudsman program, hotline representatives and interested community representatives, including the director of the AARP DC State Office, to conduct brainstorming sessions to identify troublesome areas for our client community that cry out for systemic reform. We endeavored to think as expansively as possible, and, with the help of a facilitator, generated and recorded a lengthy list of broad client problems. We then identified patterns and combine a long list of ideas into groups of like subjects. Next, we discussed what strategies would be most efficacious. In some cases, a multifaceted approach (combing litigation, legislation, and community education, for instance) was deemed necessary. In most cases we were able to agree on a strategy or strategies that made sense for each initiative.

This process yielded a number of significant insights. While all staff case-handling components of LCE were represented and participated, the long term care ombudsman program, by virtue of their presence in nursing and board and care homes every day, proved to be a particularly rich source of ideas for systemic reform. The notion of thinking about impact cases proactively, as opposed to reacting to a given set of facts in one case that might have bigger implications, was a significant shift for some attorneys, but one that proved generally useful to all involved. Subsequent to the meetings, I have noticed some shift in staff perspective where they have been more attuned to considering ways that we might address problems in a systemic manner. My hope is that this shift in perspective will be one of the lasting legacies of this experiment.

## Analyzing and Ranking the Ideas

We next analyzed these ideas using a set of criteria in order to set priorities. We ask questions like: Does this problem address basic needs such as income, health or shelter? How many clients does this problem affect? Do we have current clients with this problem? Through a series of such questions, we were better able to analyze and rank the systemic issues most important to our clientele. A staff person, with feedback from others, thus took each topic and addressed these priority-setting questions in writing, circulated the draft, and then incorporated comments into a final version. This process also helped to winnow out those projects, which even if successful, would not have a substantial impact on a large number of our clients. Once we completed this process, we were ready to figure out how to marshal the necessary resources.

## Leveraging Resources to Meet the Challenge

Perhaps one of the reasons many individual case handlers may not spend a lot of time thinking about systemic reform is that they are consumed by the demands of individual casework. To generate a lot of ideas about systemic reform and then not have or be willing to devote the resources to tackle them would not necessarily be a productive exercise. While a program could decide to substantially cut back staff attorney representation on individual cases to make room for impact work, an alternative might be to increase overall resources through effective utilization of the private bar on a *pro bono* basis.

Thus, we have been experimenting with a number of techniques to “market” these ideas to larger law firms on a *pro bono* basis. Two techniques simply capitalize on ways that we currently sell individual cases. One is utilizing the listservs that we use for *pro bono* attorneys and law firms to list individual cases in which short summaries are prepared about each case with client identifying data redacted. The second method involves the “dog and pony” shows which we have been conducting for years especially at large law firms. These events, typically lasting for 1-2 hours over lunch, bring together a few partners with the *pro bono* coordinator and a large group of other attorneys at the law firm. We are asked to speak to the firm about our organization, the types of cases we handle, and the procedures for getting a case. In the last several events, we have showcased the availability of systemic initiatives as well as individual cases.

Other avenues for attracting private firms to take these larger projects involve networking, both in an informal and formal manner. In the course of our 27 year history with *pro bono* programs, we have come to know many of the players in large law firms locally. Some actually worked at LCE while in law school. One such attorney, who is particularly interested in long term care, was recently contacted about one of the many systemic issues in long term care. After a brief explanation of the problem, he was quick to accept the matter in an area that he had been involved with LCE many years ago.

## **A New Successful Methodology**

But we have hit upon one method that has been incredibly successful and easily replicable. Specifically, one of LCE's Advisory Board members, Adrian Steel, a partner with the law firm of Mayer, Brown, Rowe and Maw took it upon himself to identify as many former LCE attorney Board members as possible and track down their current addresses. A letter was drafted and signed by LCE's current Board Chair, John Pickering, name partner in the law firm of Wilmer Cutler Pickering LLP, inviting all past and present LCE attorney Board members to a lunch meeting hosted by Mayer, Brown, Rowe and Maw. The purpose of the meeting was to introduce the attendees to a series of impact initiatives on which the law firm representatives might be willing to assist.

To prepare for the meeting, staff at LCE finalized a document outlining about seven systemic initiatives. The projects ranged from enforcement of nursing home standards to fair housing litigation to drafting a handbook on grandparent's rights. This memo was converted into PowerPoint format and distributed at the lunch meeting. After a brief welcome and introduction by Mr. Steel and Mr. Pickering, I made a presentation to the approximately twenty attendees and gave an overview of each of the seven initiatives. Mr. Steel then led attendees again through each initiative and requested volunteers for each of the projects. By the close of the meeting, at least one firm and, in most instances, several firms expressed an interest in each initiative. The meeting, lasting just under two hours, was perhaps the most productive meeting on systemic initiatives in LCE's 29 year history.

The next step of the process was a series of telephone conferences on each discrete topic. All luncheon attendees who expressed an interest in each project were invited to join the conference call. Mr. Steel and I facilitated the conference calls. Additionally, LCE staff experts in the individual legal area that was the subject of the call joined in. The experts explained the nature of the problem and explored various approaches to the problem with others on the call. Each conference call lasted approximately one hour. Each call concluded with a summary, later reduced to writing and distributed to all participants, which included the next steps and who would take them. For instance, in the area of fair housing, the participants decided that they needed additional substantive materials and a training session. LCE staff agreed to collect additional substantive materials and conduct a training event a month later hosted by one of the participating firms to which all other firms were invited.

A number of significant and serendipitous events have also occurred during this process adding additional zest to this effort. Several other law firms have heard about the initiative and have signed on to assist on one of the projects. One project to enlist *pro bono* law firms to represent nursing home residents in transfer hearings spawned another project to educate homeless shelter and adult day care center staff about the nursing home discharge rules in order to monitor any possible "illegal dumping" of nursing home residents into the community without proper notice and discharge planning. Additionally one law firm, impressed by these undertakings, made a substantial financial donation to

LCE. Finally, one firm agreed to accept, on a *pro bono* basis, a significant number of wills over a several month period. “Bulk referrals” of will cases are much more efficient from our perspective than the “one will-one client” referral approach we have historically used.

### **Monitoring Progress**

Our plan is that each of these initiatives will be treated in a manner similar to our individual cases in our *pro bono* project (The Volunteer Lawyers Project) in terms of monitoring and quality control. That is to say, each project will have a lead staff person assigned to it. The staff of the Volunteer Lawyers Project will periodically check with the staff person and, when warranted, with the *pro bono* law firm on the status of the project. To date, a couple of reports summarizing progress on each project have been prepared.

### **A Win-Win Scenario**

I have often felt that in a city like Washington DC with many large and prestigious law firms, larger *pro bono* projects can be an easier “sell” to private firms than individual cases. Often the difficulty lies in identifying the right issues, analyzing what can be done, and marketing the ideas in an effective way. The beauty of what we have learned to date is that a simple process like the one described here appears to be a very effective. The ‘buy-in” by staff, the Board, and the *pro bono* firms, each making an essential contribution to the process, creates a shared enthusiasm and willingness to participate so that no one entity is unduly burdened. Ultimately, the result should be that we as a team significantly improve the quality of life for a large number of our clients.

i Jan Allen May is the Director of AARP Legal Counsel for the Elderly in Washington, D.C. and Co-Chair of the MIE Journal Committee.